IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9564 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RK MAHIDHA

Versus

STATE OF GUJARAT

Appearance:

MR KV SHELAT for Petitioner

MR PREMAL JOSHI for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12/10/2000

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. The petitioner prayed for direction to the respondents to pay him pension with 12% interest. The facts of the case as stated in the petition are that the

petitioner had joined the office of the respondent No.2 as clerk in City Survey Office at Ahmedabad on 3.4.1940. He continued to work on that post till 6.10.1956. On 6.10.1956, the petitioner was selected as gazetted officer and posted as Assistant Consolidation Officer, Bharuch, and on which post he worked till 19.11.1961. On 18.11.1961, the respondent-State of Gujarat issued the order of reversion of the petitioner and posted him as Assistant District Inspector, Land Records, Amreli. On 19.11.1961, the petitioner wrote a letter to the respondent No.2 and asked for his voluntary retirementary from the job before taking charge at lower post. It is also the case of the petitieonr that he handed over the charge to Mr.P.L.Vyas. In the year 1961-62, the petitioner wrote a letter to respondent No.2 for fixing his pension as the petitioner has voluntarily retired from the job and he had rendered his services for more than 21 years. From 1961 onwards till 26.11.92, there appears to be nothing from the side of the petitioner in respect of his grievance made in this special civil application. On 26.11.1992, the petitioner wrote a letter to respondent No.1 regarding his pension and he has been informed that he has to apply to the respondent No.2. The respondent No.2, in December, 1992, gave vague reply to the petitioner. On 27th August, 1993, the petitioner therefore applied to respondent No.2. A copy of the same was sent to respondent No.1 but nothing has turned out therefrom. Then the petitioner approached to the Gujarat Civil Services Appellate Tribunal and his appeal came to be rejected on the ground of limitation. The petitioner then filed this petition in this court.

#. Along with the special civil application, the petitioner has not filed a copy of the order passed by the Tribunal. However, this fact has been mentioned by petitioner in paragraph-7. The petitioner has conveniently drafted this petition as if directly he is coming before this Court. In fact, he has already approached to the Tribunal and the Tribunal has dismissed his appeal and that order has to be challenged. Otherwise also, once the Tribunal has not entertained the appeal on the ground of limitation, this petition cannot be entertained. I do not find any illegality in the order of the Tribunal. The Tribunal has rightly held that after 36 years, no relief of the nature as prayed for is to be given to the petitioner on the ground of limitation. The learned counsel for the petitioner, relying on the decision of the Hon'ble Supreme Court, contended that the pension is not a bounty but the right of the employee. There cannot be any dispute on this legal position but it is not the law that at any point of

time, irrespective of limitation, the petitioner can make prayer to the court. Otherwise also, it is doubtful whether in the year 1961 when the petitioner applied for voluntary retirement, it was permissible to him or not. It may be a case where the petitioner had left his job as he was not happy with his reversion from the post of Assistant Consolidation Officer to that of Assistant District Inspector of Land Records. There is nothing on the record that the petitioner has been permitted to go on voluntary retirement. This filing of the petition by the petitioner after 39 years of his alleged voluntary retirement is hardly of any substance to keep the cause surviving. This writ petition has been filed after about 39 years of the voluntary retirement for pension. Merely because the petitioner is an old man, he cannot be given pension. The petitioner slept over his right and this inordinate and unexplained delay is itself sufficient for dismissal of this writ petition, more so when the Tribunal has not entertained the appeal.

#. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, earlier granted stands vacated. No order as to costs.

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(sunil)